IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1640 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KALUBHAI GHAMIRBHAI & 1 - Appellant(s)
Versus
DELETED & 2 - Defendant(s)

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Appearance :
MR RN SHAH for Appellant(s) : 1 - 2.
None for Defendant(s) : 1 - 2.
MR SV RAJU for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants have challenged the judgement and award dated 22.01.83 passed by the Motor Accident Claims Tribunal (Aux), Panchmahal at Godhra in MACP No. 261/82 whereby the Tribunal awarded Rs. 27,400/- towards compensation alongwith interest at the rate of 6% per annum payable to the appellants by the opponents.

2. The original claimants-present appellants, being the parents of the deceased, filed a claim petition claiming

for Rs.75,000/- in respect of the accident which occurred on 01.03.82 while the son of the appellants was pillion-riding on the bicycle. At that time, the truck driven by opponent no.1 came from behind and knocked down the bicycle. The son of the appellants died as a result of the said accident. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr R.N Shah, learned counsel for the appellant has contended that having held that the respondent no.1 was driving the truck rashly and negligently, the Tribunal ought to have awarded the full claim as prayed for in the claim petition. He has further contended that the Tribunal has not considered the decision of the Apex Court in the case of ***"U.P. State Road Transport Corporation and Ors. Vs. Trilok Chandra & Ors."*** reported in 1996(3)GLR 136 while considering the future loss of income.

3.1 Mr Shah has also contended that the Tribunal ought to have awarded Rs.10,000/- by way of pain, shock and suffering as the deceased had survived for one hour after the incident and therefore the award of the Tribunal calls for interference by this Court.

4. Heard learned counsel for the parties. I have gone through the award of the Tribunal and the materials placed on record. The Tribunal has assessed the income of the deceased at Rs. 10/- per day as minimum wages under the Minimum Wages Act. Taking the daily income as it is, in view of the aforesaid decision of the Apex Court, the average income shall come to Rs. 450/- per month whereas the Tribunal has proceeded further on the basis of the monthly income without calculating the average income.

4.1 From the documentary evidence available on record, it is evident that the age of the deceased at the time of the said accident was 18 years. The deceased was a young boy and had his whole life before him. In this context, it would be relevant to refer to a Division Bench decision of this Court in the case of **Ranchhodbhai Somabhai v. Babubhai Bhailalbhai** reported in **1982 G.L.H. pg. 28** wherein, it has been held that two third of the datum figure would be diverted by the deceased for the maintenance of his own family and one third for the maintenance of his parents. Similar principle has been laid down in a subsequent decision of this Court in the case of **Smt. Rafia Sultan Widow of Mirsa Sultan Alil v. Oil and Natural Gas Commission** reported in **1985 (2) G.L.R. pg. 1315**.

4.2 In that view of the matter, one-third of the future income shall come to Rs. 150/- which is Rs. 1800/- per annum. The Tribunal looking to the age of the deceased and the parents, in the light of the aforesaid decision ought to have applied a multiplier of 16, which gives an amount of Rs. 28,800/-(1800 x 16). Therefore, since the Tribunal has already awarded Rs. 19,200/- towards dependency benefits, an additional amount of Rs. 9,600/- is required to be awarded to the appellants.

4.3 As regards the contention of pain, shock and suffering is concerned, I am of the opinion that the Tribunal has compensated the appellants under the said head on the lower side. The Tribunal has observed that the evidence of Jashvantbhai shows that the deceased survived for about an hour after the accident and that there is no other evidence either to show that the deceased died immediately after the accident or after one hour. In that view of the matter, the Tribunal ought to have awarded Rs. 5000/- under the said head. Therefore, the appellants are entitled to an additional Rs. 2,600/- under the head of pain, shock and suffering as the Tribunal has already awarded Rs.2,400/- under the said head.

5. In the premises aforesaid, the appeal is partly

allowed. The appellants shall be entitled to an additional amount of Rs. 12,000/-(Rs.9600/- + Rs. 2400/-) along with interest at the rate of 6% per annum from the date of application. The award of the Tribunal is modified accordingly. No order as to costs.

(K.S. JHAVERI, J.)

Divya//